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7 Attorney for
A.B.

8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 A.B., a minor, By and Through
11 W.F.B., His Guardian Ad Litem,

12 Plaintiff,

13 v.

14 SAN FRANCISCO UNIFIED
15 SCHOOL DISTRICT,
Defendant.

CASE NO. C07-4738 PJH

ADMINISTRATIVE MOTION FOR
ORDER TO PROTECT PLAINTIFF'S
RIGHT TO PRIVACY BY PROCEEDING
UNDER PSEUDONYM

Memorandum of Points and Authorities
Contained Herein and Declaration in
Support of Application Filed Concurrently
Herewith

16 _____/
17 Pursuant to Local Rule 79-5, on behalf of Plaintiff A.B. by and through his Guardian Ad
18 Litem, W.F.B., Roberta S. Savage, counsel for Plaintiff, hereby moves this Court for an order (1)
19 allowing Plaintiff and his Guardian Ad Litem to proceed with this action under the names "A.B."
20 and "W.F.B." and (2) requiring all parties to either file under seal all documents that contain the full
21 names and/or personally identifiable information of Plaintiff and/or Guardian Ad Litem. This
22 motion is based upon all papers and pleadings filed in this matter, the following points and
23 authorities, and the separately filed Affidavit of Counsel, which is filed under seal and reveals the
24 full names of Plaintiff and his Guardian Ad Litem.

25 MEMORANDUM OF POINTS AND AUTHORITIES

26 The instant case was filed against Defendant SAN FRANCISCO UNIFIED SCHOOL
27

28 A.B. v. SAN FRANCISCO UNIFIED SCHOOL DISTRICT

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Administrative Motion for Order to Protect Plaintiff's Right to Privacy by Proceeding under a Pseudonym

1 DISTRICT pursuant to the Individuals with Disabilities Education Act (*hereinafter* “IDEA”). (*See*
2 *generally* 20 U.S.C. §§1400 et seq.). As alleged in the complaint, Plaintiff is **an eleven** year old
3 child with a disability. Plaintiff and his Guardian Ad Litem wish to proceed with this case under the
4 names “A.B.” and “W.F.B.,” respectively, so that Plaintiff’s privacy rights will be protected.
5 Plaintiff and his Guardian Ad Litem also request that no documents be filed on the public record
6 with their full names and/or other personally identifiable information.

7 Plaintiff, as a minor middle school student and a child with a disability, has a constitutionally
8 and statutorily protected privacy interest in avoiding disclosure of personal matters, such as
9 educational records and medical records. (*See e.g. Norman-Bloodsaw v. Lawrence Berkeley*
10 *Laboratory*, 138 F.3d 1260, 1273-74 (9th Cir. 1998) (constitutional right to privacy). The statutory
11 protections are guaranteed by the IDEA and the federal regulations promulgated thereunder (34
12 C.F.R. §§300.560-576 (confidentiality of student’s records)), as well as the Family Educational
13 Rights and Privacy Act of 1974 (*hereinafter* “FERPA”), as amended, Section 1232g(b) of Title 20
14 of the United States Code and the federal regulations promulgated thereunder, commencing at
15 Section 99.1 of Title 34 of the Code of Federal Regulations (20 U.S.C. §1232g(b); 34 C.F.R. §§ 99.1
16 *et seq.* (Subparts A and D). The phrase “personally identifiable information” is defined similarly,
17 both in the IDEA regulations and FERPA regulations, as including the student’s name; the student’s
18 address, the name of the student’s parent or other family member; a personal identifier, such as a
19 social security number or student number; a list of personal characteristics or other information that
20 would make it possible to identify the student. (*See* 34 C.F.R. §300.500 (IDEA); *see also* 34 C.F.R.
21 §99.3 (FERPA)).

22 Defendant will not be prejudiced by allowing Plaintiff to use a pseudonym, because
23 Defendant will be served with the Affidavit of Counsel, which identifies the full names of Plaintiff
24 and his Guardian Ad Litem. Defendant has personal knowledge of the identity of Plaintiff and his
25 family and the dispute. Requiring documents to be filed under seal will not in any way prejudice
26 Defendant. Finally, although the public, generally, has an interest in the actions brought before the
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28 A.B. v. SAN FRANCISCO UNIFIED SCHOOL DISTRICT

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1 federal courts, Plaintiff's privacy interest outweighs the public interest, and the public has no interest
2 in the identity of the named Plaintiff that outweighs the Plaintiff's interest in keeping sensitive
3 information confidential.

4 Plaintiff's request is consistent with the Local Rule 3-17 (a)(2) which requires that in any
5 matter where a minor is referenced in a pleading, the minor should be referenced using initials only.

6 Accordingly, Plaintiff requests that the Court enter an order that (1) Plaintiff and his
7 Guardian Ad Litem may proceed with this action under the names "A.B." and "W.F.B." respectively;
8 and that (2) all documents filed by any party that contain any personally identifiable information, of
9 Plaintiff or his Guardian Ad Litem, including any document with any portion of Plaintiff's or his
10 Guardian Ad Litem's name, be filed under seal, which specifically includes the Affidavit of Counsel
11 filed with the Complaint.

12 Respectfully Submitted,

13 ROBERTA S. SAVAGE

14 Attorney for Plaintiff A.B.

15
16 Dated: September 19, 2007

By:

Roberta S. Savage